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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/044,463	01/10/2002	Davide R. Grassetti	107-000110US	9878

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QUINE INTELLECTUAL PROPERTY LAW GROUP, P.C.
P O BOX 458
ALAMEDA, CA 94501

EXAMINER

WANG, SHENGJUN

ART UNIT	PAPER NUMBER
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1617

MAIL DATE	DELIVERY MODE
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11/20/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/044,463	Applicant(s) GRASSETTI ET AL.	
	Examiner Shengjun Wang	Art Unit 1617	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 July 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 22 October 2007. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): rejections under 35 U.S.C. 112, second paragraph.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1,2,5,6,10-12 and 20-24.
Claim(s) withdrawn from consideration: 3,7-9 and 13-16.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: interview summary.

SHENGJUN WANG
PRIMARY EXAMINER

Shengjun Wang
Primary Examiner
Art Unit: 1617

S. Wang

Continuation of 11. does NOT place the application in condition for allowance because: the claims 1, 2, 5, 6, 10-12, 20-24 are properly rejected under 35 U.S.C. 102, for the reasons set forth in the prior office action. Particularly, Applicants argue the Henderson discloses 6,6'-dithiondinicotinic acid is not shown to inactivate the virus as no data is presented in the column for protein. Applicants' reading of the data is incorrect. Note table 2 presents the results of several test, blank cell through out table 2 indicate that the compound has yet to be tested for the specific property (col. 20, lines 53-55). The antiviral activities of the compounds are also supported by the X-link properties (see col. 20). Applicants attention is further directed to the claims, particularly, claims 6 and 7, wherein 6,6'-dithiondinicotinic acid is particularly claimed as useful against retrovirus. Further, Since every patent is presumed valid (35 U.S.C. 282), and since that presumption includes the presumption of operability (Metropolitan Eng. Co. v. Coe, 78 F.2d 199, 25 USPQ 216 (D.C.Cir. 1935),examiners should not express any opinion on the operability of a patent. Furthermore, since in a patent it is presumed that a process if used by one skilled in the art will produce the product or result described therein, such presumption is not overcome by a mere showing that the patent lacks working example.

As to the rejections over Grassetti, note, Grassetti particularly teaches the treatment of cancer patients. As well-recognized cancer patients are those individual in need of immune response modulation.

The afterfinal amendments will be entered as the amendments will overcome the rejections under 35 U.S.C. 112, second. paragraph. However,the amendments will not affect the scope of claimed invention and will not affect the rejections under 35 U.S.C. 102.